

REMARKS

The office action states that the allowability of pending claims 1, 2, 4 and 5 are withdrawn. The claims have now been rejected under Sections 102 and 103 based on the citation of newly cited reference Brahmaroutu (US 2003/0033427 A1).

The office action states that Brahmaroutu, under Section 102(e) anticipates the claimed invention. However, the published Brahmaroutu application is not, in fact, prior art because it was not filed in the United States before the invention by the applicant for patent. More specifically, the Brahmaroutu application was filed on May 10, 2001 and was published on February 13, 2003. However, Applicant's instant non-provisional application (Serial No. 09/973,627), which was filed on October 9, 2001, also included a claim of priority under Section 119(e) at the time of filing to prior provisional patent application Serial No. 60/238,926, which was filed on October 10, 2000 where the invention was fully disclosed. Enclosed is a copy of the declaration of the inventor submitted in the instant application where priority under Section 119(e) was clearly claimed (see page 3 of the declaration).

However, it appears that this claim of priority, under Section 119(e), to the prior provisional application was not officially listed in the record for the instant application. As a result, the claim of 119(e) priority did not appear on the official filing receipt of the instant application (see attached) and does not currently appear in the online PAIR system.

Applicant's claim for 119(e) priority was made at the time of filing of the instant application. In accordance with Section 119(e)(1), applicant has now amended the

specification to include a specific reference to the earlier filed provisional application. Thus, the instant application now officially has an effective filing date of October 10, 2000. Since the effective filing date of the instant application predates both the filing date and the publication date of Brahmaroutu, the Brahmaroutu reference is not available as prior art.

In view of the foregoing, applicant submits that claims 1, 2, 4 and 5 remain patentable over the prior art. Reconsideration of the Rejections are requested. Allowance of the pending claims at an early date is solicited.

If an extension of time is required for timely submission of this response, Applicant hereby petitions for an appropriate extension of time and the Office is authorized to charge Deposit Account 02-0900 for the appropriate additional fees in connection with the filing of this response.

The Examiner is invited to telephone the undersigned should any questions arise.

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Respectfully submitted,



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